

# Our Attorney Writes On Riparian Rights and other legal matters of concern

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## Three Recent Court Decisions of Interest To Riparians

In this issue's column, I report on three court cases which will likely be of interest to riparians. They involve special watercraft rules, aircraft landing on lakes, and properties dedicated for the private use of lot owners in a plat.

### Special Watercraft Rules

Many riparians are aware of the ability of the Michigan Department of Natural Resources ("DNR") to approve special watercraft rules for lakes in Michigan pursuant to a portion of the Michigan Environmental Code (formally known as the "Marine Safety Act"). Special watercraft rules can include speed limits, no wake areas, no wake lakes and hours for high speed boating activity. Getting a special watercraft rule adopted is not easy. First, the local municipality (city, village or township) must adopt a resolution requesting the DNR to consider the proposed rule. Second, the DNR holds a public hearing (with appropriate newspaper notice) and makes its determination. If the DNR decides not to proceed with the special watercraft rule, that is the end of the matter. If the DNR approves the rule, it is sent back to the local municipality for final approval. Finally, if the local municipality approves the DNR sanctioned special watercraft rule, it becomes law through adoption of a local ordinance. If the municipality declines, the rule will not go into effect.

In Andrews v Holly Twp, \_\_\_\_ F Supp 2d \_\_\_\_ (Eastern District of Michigan 2002), a property owner challenged the adoption of a special watercraft rule on Marl Lake in Holly Township. The federal district court dismissed

the case without reaching a decision on the merits—the federal court held that the case should have been brought in Michigan's state courts. Nevertheless, the federal court implied that the special watercraft rule in that case might not be valid since the strict statutory adoption requirements may not have been met.

If you or other riparians on your lake desire to initiate the special watercraft rule adoption procedure, make sure that your local municipality and the DNR follow all required statutory procedures precisely. Furthermore, the DNR generally refuses to approve any special watercraft rules absent significant safety issues—the DNR usually will not consider nonsafety issues such as lake overcrowding, inconvenience or environmental considerations. Also, unless a sizable majority of the property owners on a lake desire to have the special watercraft rule adopted, it is unlikely that the DNR will approve an unpopular rule proposal.

### Aircraft Landing on Lakes

Although sea planes landing and taking off on crowded or small lakes in the lower peninsula of Michigan have generally not been a problem in the past, controversies involving them are increasing. Why anyone would be so self-ish as to impose sea plane landings on their lake neighbors (to the point of sometimes even making them fear for their safety) on an urbanized or crowded lake is beyond me. Nevertheless, there appear to be an increasing number of incidents where sea planes are landing and taking off from lakes where such craft have no business being around. Under current Michigan law, local municipi-

palities can regulate and even ban sea planes on lakes. (I am using "sea plane" as a generic term to include float planes, flying boats, amphibians, and other aircraft capable of landing on and taking off from water.)

Local governmental regulation of sea planes has an interesting litigation history in Michigan. In 1996, the Sixth Circuit Federal Court of Appeals (i.e., the court just below the United States Supreme Court) held that Michigan municipalities have the authority to regulate and even ban sea planes on lakes within their jurisdictions. The Court rejected the notion that federal law and the Federal Aeronautics Administration have exclusive authority over sea planes on lakes. Despite this definitive decision in Gustafson v City of Lake Angelus, 76 F3d 778 (6th Cir 1996), advocates for sea planes simply would not take "no" for an answer. Rather, they lobbied the Michigan Aeronautics Commission ("MAC") to adopt administrative regulations which would preclude local governmental regulation of sea planes. Predictably, MAC adopted such special interest regulations. In the recent Oakland County Circuit Court case of City of Lake Angelus v Michigan Aeronautics Comm'n, (Oakland County Case No. 01-031671-CZ), MAC attempted to have the sea plane regulations of the City of Lake Angelus (the same municipality involved in the earlier federal lawsuit) thrown out. Happily, the trial court judge held that MAC exceeded its Michigan statutory authority in adopting such regulations, such that the city's sea plane ordinance remains in effect. That case is on appeal. This is just one more example

